

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAMPAIGN FOR ACCOUNTABILITY,
611 Pennsylvania Avenue SE, #337
Washington, DC 20003

Plaintiff,

v.

U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

Defendant.

Case No. 19-cv-0624

COMPLAINT

1. Plaintiff Campaign for Accountability brings this action against the U.S. Department of Health and Human Services under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant U.S. Department of Health and Human Services has failed to comply with the applicable time-limit provisions of the FOIA, Campaign for Accountability is deemed to have constructively exhausted its administrative remedies pursuant to 5 U.S.C.

§ 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Campaign for Accountability (“CfA”) is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. CfA uses research, litigation, and communications to expose misconduct and malfeasance in public life. Through research and FOIA requests, CfA uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government, local and state governments and other public actors through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant the U.S. Department of Health and Human Services (“HHS”) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records that CfA seeks.

STATEMENT OF FACTS

7. Title V is the Maternal and Child Health Block Grant. State health agencies apply annually, and HHS issues the Title V grant funding.

8. Title X is a federal grant program dedicated to providing comprehensive family planning and related preventative healthcare services, and is designed to prioritize low-income individuals.

9. On February 23, 2018, HHS issued the FY 2018 Title X Family Planning Services Funding Opportunity Announcement (Funding Opportunity Number PA-FPH-18-001). Applications were due by May 24, 2018.

10. On November 7, 2018, HHS issued the FY 2019 Announcement of Funds for Title X Family Planning Services Grants (Funding Opportunity Number PA-FPH-19-001). Applications were due by January 16, 2019.

11. On December 20, 2018, and January 17, 2019, CfA submitted FOIA requests to HHS seeking documents and records related to application materials submitted to HHS for federal funding under the Title V and Title X grant programs. The specifics of each request are set out in detail below.

FOIA Request #1—December 20, 2018 Title V Request to HHS

12. On December 20, 2018, CfA submitted a FOIA request to HHS seeking:

Copies of any application, award, and acceptance materials pertaining to HHS's Title V Sexual Risk Avoidance Education Program funding submitted by or sent to Obria Medical Clinics or Obria Group.

13. This request sought all responsive records from January 20, 2017, to the date of the search. A copy of CfA's December 20, 2018 FOIA request regarding Obria's Title V application materials is attached hereto as Exhibit A and is incorporated herein.

14. HHS has not sent CfA any acknowledgment of, tracking number for, or communication concerning this request.

FOIA Request #2—December 20, 2018 Title X Request to HHS

15. On December 20, 2018, CfA submitted a FOIA request to HHS seeking:

Copies of any application materials submitted in response to HHS's FY 2018 Title X Family Planning Services Funding Opportunity Announcement by Obria Medical Clinics or Obria Group.

16. This request sought all responsive records from January 20, 2017, to the date of the search. A copy of CfA's December 20, 2018 FOIA request regarding Obria's 2018 Title X application materials is attached hereto as Exhibit B and is incorporated herein.

17. HHS has not sent CfA any acknowledgment of, tracking number for, or communication concerning this request.

FOIA Request #3 — January 17, 2019 Title X Request to HHS Regarding Obria

18. On January 17, 2019, CfA submitted a FOIA request to HHS seeking:

Copies of any application materials submitted in response to HHS's FY 2019 Announcement of Funds for Title X Family Planning Services Grants (Funding Opportunity Number PA-FPH-19-001) by Obria Medical Clinics or Obria Group.

19. This request sought all responsive records from November 1, 2018, to the date of the search. A copy of CfA's January 17, 2019 FOIA request regarding Obria's 2019 Title X application materials is attached hereto as Exhibit C and is incorporated herein.

20. On January 31, 2019, HHS sent CfA an acknowledgment letter assigning tracking number 2019-00474-FOIA-OS and stating that the request had been referred to the HHS Program Support Center (PSC). The corresponding PSC tracking number is PHS FOIA Case No.: 19-0122-FOIA.

FOIA Request #4 — January 17, 2019 Title X Request to HHS Regarding State Submissions

21. On January 17, 2019, CfA submitted a FOIA request to HHS seeking:

Copies of any application materials submitted in response to HHS's FY 2019 Announcement of Funds for Title X Family Planning Services Grants (Funding Opportunity Number PA-FPH-19-001) by Missouri Department of Health and Senior Services or Arizona Department of Health Services.

22. This request sought all responsive records from November 1, 2018, to the date of the search. A copy of CfA's January 17, 2019 FOIA request regarding Missouri Department of Health and Senior Services and Arizona Department of Health Services Title X application materials is attached hereto as Exhibit D and is incorporated herein.

23. On January 31, 2019, HHS sent CfA an acknowledgment letter assigning tracking number 2019-00476-FOIA-OS and stating that the request had been referred to the HHS Program

Support Center (PSC). The corresponding PSC tracking number is PHS FOIA Case No.: 19-0121-FOIA.

FOIA Request #5 —January 17, 2019 Title X Requests to HHS

24. On January 17, 2019, CfA submitted a FOIA request to HHS seeking:

Copies of any records sufficient to identify the entities that submitted application materials in response to HHS's FY 2019 Announcement of Funds for Title X Family Planning Services Grants (Funding Opportunity Number PA-FPH-19-001).

25. This request sought all responsive records from November 1, 2018, to the date of the search. A copy of CfA's January 17, 2019 FOIA request regarding Title X applicants is attached hereto as Exhibit E and is incorporated herein.

26. On January 31, 2019, HHS sent CfA an acknowledgment letter assigning tracking number 2019-00475-FOIA-OS and stating that the request had been referred to the HHS Program Support Center (PSC). The corresponding PSC tracking number is PHS FOIA Case No.: 19-0120-FOIA.

Exhaustion of Administrative Remedies

27. As of the date of this Complaint, HHS has failed to (a) notify CfA of a final determination regarding any of the FOIA requests, including the scope of any responsive records HHS intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

28. Through HHS's failure to respond to CfA's FOIA requests within the time period required by law, CfA has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records

29. CfA repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

30. CfA properly requested records within the possession, custody, and control of HHS.

31. HHS is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

32. HHS has failed to promptly review agency records for the purpose of locating those records that are responsive to CfA's FOIA requests.

33. HHS's failure to conduct adequate searches for responsive records violates FOIA.

34. Plaintiff CfA is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly make reasonable efforts to search for records responsive to CfA's FOIA requests.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Records

35. CfA repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

36. CfA properly requested records within the possession, custody, and control of HHS.

37. HHS is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

38. HHS is wrongfully withholding non-exempt agency records requested by CfA by failing to produce records responsive to its FOIA requests.

39. HHS is wrongfully withholding non-exempt agency records requested by CfA by failing to segregate exempt information in otherwise non-exempt records responsive to CfA's FOIA requests.

40. HHS's failure to provide all non-exempt responsive records violates FOIA.

41. Plaintiff CfA is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, CfA respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to CfA's FOIA requests;
- (2) Order Defendant to produce, by such date as the Court deems appropriate, any and all non-exempt records responsive to CfA's FOIA requests and an index justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to CfA's FOIA requests;
- (4) Award CfA the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant CfA such other relief as the Court deems just and proper.

Dated: March 6, 2019

Respectfully submitted,

/s/ Sara Kaiser Creighton
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D.C. Bar No. 1002367

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**Pro hac vice application forthcoming*